



## Jesuit Refugee Service

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### **LIBE committee hearing on “asylum and resettlement”**

**20 October 2011, European Parliament**

**Session: “Detention”, chaired by MEP Antonio Masip Hidalgo (PS, Spain)**

**By: Philip Amaral, *policy and communications officer, JRS Europe***

Mr Chair,  
Members of the European Parliament,  
Ladies and Gentlemen,

On behalf of the Jesuit Refugee Service, I would like to thank the Chair and the LIBE committee for being invited to this panel. I will speak our latest research on detention, and how the findings of that study align with the current debate on the Reception Conditions Directive. The executive summary of our study, entitled, “Becoming Vulnerable in Detention”, is a part of the documentation for this hearing. Finally, I hope to also make some remarks about research on alternatives to detention.

The mission of the Jesuit Refugee Service is to accompany, serve and advocate for refugees and forced migrants. For years, JRS staff and volunteers have conducted visits to detention centres, to offer legal, social and pastoral support. In 2005 and 2007, we released reports that revealed the wide use of detention in Europe.

#### **Becoming Vulnerable in Detention**

Building on that work, in 2008 we embarked on a project, co-funded by the ERF, to learn more about the linkages between human vulnerability and detention. We wanted to research not only how detention impacts people with special needs, but also whether detention has any systematic impact on people who do not possess special needs.

Altogether, we interviewed 685 detained asylum seekers and undocumented migrants in 21 EU member states. The diversity of our sample was extraordinary: people as young as 10 and as old as 64; asylum

seekers in the procedure, refused asylum seekers and people in Dublin procedures. A variety of nationalities were represented.

We began the study with a notion of 'vulnerability' found in existing norms, which include women, children, unaccompanied minors, people with medical and psychological needs, victims of torture and the disabled, among others. This understanding of 'vulnerability' sees it as a pre-determined set of factors that remain fixed regardless of the situation a person is in.

But our results show, that within the context of detention, 'vulnerability' has a lot to do with a person's susceptibility to harm.

Three of our most important findings are:

- 1) Detention, in its inherent form, is more likely to inflict harm, than to bring benefit, to the person experiencing it;
- 2) Persons with officially recognised special needs are indeed 'vulnerable', because of the factors they possess, e.g. having a torture history, being an unaccompanied minor, and so on.
- 3) Persons who do not have such special needs are made vulnerable within the environment of detention.

Detention has a distinctively deteriorative effect upon the human person. It makes otherwise healthy people weaker, and more susceptible to physical and mental harm. This deteriorative effect exists regardless of age, sex, nationality and legal status. A person's vulnerability deepens as the length of detention endures – but its harmful consequences already become apparent well within the first month, and even within the first weeks.

In our study, 'vulnerability' manifested itself in various ways. The living conditions of detention centres, such as their closed and prison-like nature, and the psychological pressure that comes with the uncertainty of their situations, led to repeated reports of insomnia, migraines, appetite loss and symptoms

related to asthma. There were widespread reports of severe anxiety and depression-like symptoms, such as persistent sadness, anger and lethargy, hopelessness and guilt.

Several other factors were found to influence people's level of vulnerability in detention: isolation from the 'outside world', the inability to obtain reliable information about asylum and immigration cases, language barriers, the enormous disruption to whatever life plan people had for themselves. The inability to communicate in an understandable language sometimes led to verbal and physical abuse.

A vast majority of people, around 80%, couldn't say when they would be released from detention. This uncertainty places an enormous amount of stress on people, and is an element of immigration detention that is markedly worse than imprisonment for convicted criminals.

### **The study's impact on EU policymaking**

The findings from our study lend strong support toward the legal provisions on detention in the series of Reception Conditions recast proposals made by Mr Masip and the Commission. Indeed, our study concludes that if there are to be common EU legal rules on detention, there are certain elements that must be taken into account as a necessity.

Firstly, people should not be detained if they are in the asylum procedure. In our study, almost half of the sample was asylum seekers – and a disproportionate number were found to be in prolonged detention. Our analysis shows that all of the negative effects of detention, the factors that cause vulnerability, worsen in the situation of asylum seekers.

Secondly, people should be subject to physical and mental health assessments prior to detention – and these assessments should be regularly performed as detention endures. Such checks should be administered at ports of entry in order to avoid detention altogether for persons who are found to have vulnerabilities and special needs. There should be ongoing checks in detention because any person is

vulnerable to harm and deterioration within a short time span. Independent professionals should administer these checks.

Thirdly, detainees should have access to all information regarding their cases, in a language they can understand. And they should have access to qualified legal assistance and representation. We found that one of the biggest factors of vulnerability is the lack of information, or poorly transmitted information – not only from government authorities and detention centre staff, but also from lawyers who are poorly qualified, or ignorant of immigration and asylum law.

Fourthly, it is essential that detainees have access to judicial review. This is a very important way to ensure that detention is used only on the narrowest grounds, and that inappropriate detention is detected early and avoided altogether.

Fifthly, if used at all, detention really does need to be as short as possible, and for clearly stated reasons that are proportional to a person's situation. Another big factor that led to harm in detention was the high level of uncertainty people felt, and their prolonged detention. Whether it's for undocumented migrants awaiting return, or asylum seekers awaiting a decision, member states should endeavour to achieve case resolution in a deliberate and efficient manner. Persons in detention should be informed about the progression of their case, step-by-step, and have a reasonable understanding of when their case should be resolved. Otherwise, people become subject to severe levels of anxiety, depression, aggression and other physical and mental manifestations of stress.

JRS does support the provisions on detention put forward in Mr Masip's report on Reception Conditions. We also support the proposals in the Commission's recent recast proposal – with one exception.

In the Commission's second recast, there is the possibility for member states to derogate from some conditions of detention – specifically the provision of information – in the case of interception at border

and transit points. Member states would also be able to derogate from the obligation to use specialised detention facilities where such is temporarily unavailable.

JRS expresses strong caution towards such a measure because border and transit points are very difficult for independent institutions and NGOs to monitor. If, as our study shows, people are already made vulnerable in specialised detention facilities, then there is a strong chance that the negative personal consequences would be much worse at border and transit points, where only the most rudimentary of conditions are typically available. The best way to reduce harm in detention – other than to avoid it altogether – is to provide for consistent and independent monitoring, plenty of safeguards and access to remedies. We are not confident that any of these criteria would be met at border and transit points, thus we would not recommend its inclusion into a final agreement.

## **Conclusion**

The conclusions we have reached, from research in 21 EU member states, tell us that the potential of detention to harm does not lie with just one member state or another. It is not about pointing the finger at poor conditions in one country, while admiring the conditions in another. It is about detention as a harmful measure *across the board*. Since this is the case, then alternatives must be explored.

The International Detention Coalition, an organisation based in Australia, released this year a compelling study on alternatives to detention. They undertook global research to learn: 1) how governments manage migration without resorting to detention, 2) if these alternatives were more or less effective than detention, 3) what impact do these alternatives have on migrants.

The International Detention Coalition study reached several important findings. First, governments save a lot of money when alternatives are used. In some countries the cost savings were as high as 93%. Secondly, migrants are more willing to voluntarily return home if they can make that decision in the community, provided that they have access to good and timely information.

Thirdly, if treated humanely and with dignity, migrants are willing to cooperate with the authorities. Taking several alternatives to detention into account, the organisation found migrant compliance rates to be between 80-90%. Migrants prefer to follow the rules and to be honest, rather than abscond, as long as they are treated fairly, and as long as they are not kept in the dark about what might happen to them, among other necessary conditions.

Taking the International Detention Coalition's study together with our own, and also with a recent UNHCR study on alternatives that reached similar conclusions, JRS would strongly recommend keeping a clearly phrased legal provision on alternatives to detention in the Reception Conditions recast proposal.

END

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